IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.Rev.Pet.No. 3521 of 2007()

CC.32/2004 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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REVN. PETITIONER: PETITIONER /8TH ACCUSED

S.JOHN, S/O.SAMUEL
VAYANAVILAPADINJATTETHIL,
CHATHAMKULAM P.O. PORUVAZHY,
KUNNATHOOR TALUK, KOLLAM DISTRICT.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL HIGH COURT,
ERNAKULAM (DEPUTY SUPERINTENDENT OF POLICE,
VACB, KOTTAYAM).

BY ADV. SRI. P.N. SUKUMARN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/11/2007, ALONG WITH CRL.R.P. NOS.3618, 3619, 3620, 3635,3636, 3661, 3662, 3721, 3732, 3733 & 3946 OF 2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. Nos. 3521, 3618, 3619, 3620, 3635, 3636, 3661, 3662, 3721, 3732, 3733 and 3946 OF 2007

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Dated this the 19th day of November, 2007.

ORDER

The revision petitioners, who are accused Nos. 8, 7, 6, 6, 6, 8, 6, 7, 6, 6, 8 and 9 in C.C. Nos. 32/2004, 56/2002, 28/2003, 29/2003, 23/2003, 38/2004, 31/2003, 57/2003, 24/2003, 27/2003, 61/2003 and 38/2004 respectively on the file of the court of the Enquiry Commissioner and Special Judge, Thrissur, are the loanees (beneficiaries) who had applied for loans from the Kerala State Development Corporation for Christian Converts from the Scheduled Castes and the Recommended Communities Limited (K.S.D.C.C.C.S.C.R.C. Ltd.,) which is a company registered under the Companies Act, 1956. The activities of the Corporation includes disbursement of the loans to the eligible beneficiaries of the communities for self-employment scheme etc with the financial assistance from the Nationally Backward Classes Finance Development Corporation ("NBCFDC" in short).

2. The case of the prosecution can be summarised as follows:

Accused Nos. 1, 2, 4, 5, and 7 are respectively the Managing Director, Secretary, U.D. Clerk, Administrative Officer and Junior Superintendent of the said Corporation. A1, A2 and A5 while holding office in the above capacities entered into a criminal conspiracy with the 3rd accused, a private person, during 1995-96 and in pursuance of the said criminal conspiracy false quotations were created in the names of three existing firms and in the name of a fictitious firm by name Messrs. Amma Communications, Pattazhi and managed to obtain tender in favour of the said fictitious firm. A2 and A3 entered into another criminal conspiracy with A1, A4, A5, A6, A7 and A8 and in pursuance of that criminal conspiracy, a false agreement was created in the name of one Sreedevi Premkumar on behalf of the aforesaid fictitious firm with the knowledge and connivance of A1, A4 and A5. A6 joined in the above criminal conspiracy and in pursuance of the said criminal conspiracy, huge amounts were alloted and encashed for installing cable TV net work in the name

of the revision petitioners herein who were the beneficiaries. Without installing the cable net work for the beneficiaries, the accused persons are alleged to have dishonestly and fraudulently misappropriated those amounts and thereby committed offences under Sections 13(1)(c) and 13(1)(d) punishable under Section 13(2) of Prevention of Corruption Act, 1988 and punishable under Sections 409, 465, 468, 471, 477A and 120 B IPC. After taking cognizance of the offences, the Special Judge registered the above C.C. cases and issued summons to the accused persons. The court charge is yet to be framed in all those cases. While so, A2 and A4 who are public servants filed petitions before the Special Judge seeking discharge on the ground that the order for prosecution sanction against them was not proper. As per common order dated 15.11.2005, the Special Judge discharged A2 and A4 holding that the prosecution sanction accorded by the Managing Director of the Corporation was bad since the authority competent to grant sanction was the Board of Directors of the Corporation. There is no dispute that all the accused persons including the public servants as well as the non-public

servants in each of the cases can only be tried together. Hence, consequent on the discharge of A2 and A4 for want of proper prosecution sanction, the learned Judge should have discharged the rest of the accused also. Instead, on 30.04.2007 the learned Special Judge passed the impugned order permitting the prosecution to withdraw the case as regards the rest of the accused and discharged them under Section 321 Cr.P.C. It is the said order which is assailed in all these revisions.

2. According to the revision petitioners, who are the beneficiaries under the schemes in question, after permitting the prosecution to withdraw the cases, the prosecution has subsequently filed separate charge sheet in each of the cases along with sanction orders issued by the Board of Directors as against the public servants and the said charge sheet is under challenge. Their contention is that after having permitted the prosecution to withdraw from the prosecution, there was absolutely no justification for filing fresh charge sheets with prosecution sanction with regard to the public servants and thereby the revision petitioner have to face the ordeal of trial in

spite of withdrawal of prosecution. Their learned counsel also submitted that there was no petition or request by the public prosecutor in charge of the case to withdraw the prosecution under Section 321 Cr.P.C.

3. Shri. P.N. Sukumaran, the learned Public Prosecutor also submitted that the prosecutor in charge of the case had not requested the withdrawal of the prosecution under Section 321 Cr.P.C and that the proper order which should have been passed was to discharge of the accused consequent on the discharge of A2 and A4 for want of prosecution sanction.

4. I see some force in the submissions made on behalf of both sides. The impugned order discharging the remaining accused should have been passed consequent on discharging the public servants for want of prosecution sanction since all of them could be tried only in one single trial. Hence, I make it clear that the impugned order shall be treated only as an order of discharge of the revision petitioners and the rest of the accused as a consequence of the discharge of the public servants for want of prosecution sanction. It shall not have the effect of a discharge

as a consequence of withdrawal from prosecution under Section 321 Cr.P.C since there was no such request.

These revisions are disposed of accordingly.

V. RAMKUMAR, JUDGE.

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